

1998

# In the Matter of the Estate of Welby J. Van Dyke : Brief of Appellant

Utah Court of Appeals

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Michael Gottfredson; Attorney for Appellees.

Charles A. Schultz; Attorney for Joe Van Dyke .

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## Recommended Citation

Brief of Appellant, *Van Dyke*, No. 980237 (Utah Court of Appeals, 1998).  
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UTAH COURT OF APPEALS  
BRIEF

UTAH  
DOCUMENT  
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.A10  
DOCKET NO.

980237-CA

IN THE UTAH COURT OF APPEALS

---0000000---

IN THE MATTER OF THE ESTATE OF  
WELBY J. VAN DYKE,

:  
: *ADDENDUM TO BRIEF OF APPELLANT*

Decedent.

:  
: Priority of Argument: 15

:  
: APPELLATE NO. 980237-CA

---0000000---

This is an appeal from an order of the Sixth District Court of Wayne County, Judge Tervort, denying Joe Van Dyke's Motion to Avoid the Transfers of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate and appointing Leon Van Dyke, Richard Van Dyke and Karl Van Dyke as personal representatives of the Estate of Welby J. Van Dyke.

**FILED**

**JUN 24 1998**

**COURT OF APPEALS**

Michael Gottfredson  
68 South main - 5th floor  
Salt Lake City, Utah 84101  
Attorney for Appellees

Charles A. Schultz, USB #4760  
Attorney for Joe Van Dyke  
P.O. Box 526382  
Salt Lake City, Utah 84152-6382  
Telephone: (801) 530-5636

**IN THE UTAH COURT OF APPEALS**

**---0000000---**

IN THE MATTER OF THE ESTATE OF	:	
WELBY J. VAN DYKE,	:	<b><i>ADDENDUM TO BRIEF OF APPELLANT</i></b>
	:	
Decedent.	:	Priority of Argument: 15
	:	
	:	<b>APPELLATE NO. 980237-CA</b>

**--0000000---**

This is an appeal from an order of the Sixth District Court of Wayne County, Judge Tervort, denying Joe Van Dyke's Motion to Avoid the Transfers of Property of the Estate of Welby Van Dyke to the Personal Representatives of the Estate and appointing Leon Van Dyke, Richard Van Dyke and Karl Van Dyke as personal representatives of the Estate of Welby J. Van Dyke.

Michael Gottfredson  
68 South main - 5th floor  
Salt Lake City, Utah 84101  
Attorney for Appellees

Charles A. Schultz, USB #4760  
Attorney for Joe Van Dyke  
P O Box 526382  
Salt Lake City, Utah 84152-6382  
Telephone (801) 530-5636

Judy Lefevre  
3713 Sunnyvale Drive  
West Valley City, Utah  
Telephone (801) 967-8830

WAYNE C  
VO 96-222  
FEB 14  
Benedict  
-41-

IN THE SIXTH JUDICIAL DISTRICT COURT OF WAYNE COUNTY,  
STATE OF UTAH

\*\*\*\*\*

IN THE MATTER OF THE ESTATE                    )  
  )  
  )       LETTERS TESTAMENTARY  
  )  
  )  
  )       Deceased                    )       Probate Number: 96-222

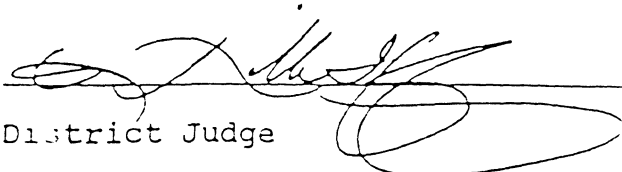
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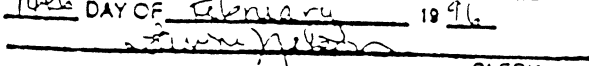
1. Rene Van Dyke, Albert Van Dyke and Judy Lefevre were  
duly appointed and qualified as Personal Representatives of the  
above named Decedent on the 14th day of February, 1996, by the  
District Judge with all authority pertaining thereto.

2. Administration of the estate is unsupervised.

These Letters are issued to evidence the appointment,  
qualification, and authority of said Personal Representatives.

WITNESS my signature and the Seal of the Court, this 14th  
day of February, 1996.

  
District Judge

COUNTY OF WAYNE :  
  : SS  
STATE OF UTAH :  
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF  
WAYNE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE  
ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN  
ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH  
CLERK  
WITNESS MY HAND AND SEAL OF SAID COURT THIS  
14th DAY OF February 19 96  
  
CLERK

126316

QUITCLAIM DEED

THIS QUITCLAIM DEED is executed this 13TH day of DECEMBER, 1996.

KNOW ALL MEN BY THESE PRESENTS: Judy Lefevre, Rene Van Dyke, and Albert Van Dyke, Personal Representatives of the Estate of Welby J. Van Dyke of Wayne County, Utah according to instructions contained in the Last Will and Testament of Welby J. Van Dyke (dated the 6th day of February, 1980) do hereby remise, release and quitclaim unto the Welby J. Van Dyke Family Trust, dated the 6th day of February, 1980, Judy Lefevre, Rene Van Dyke, Albert Van Dyke, Co-Trustees forever all the rights, titles, interests and claims which the first party has in and to the following described parcel of land, and improvements and appurtenances thereto, in the County of Wayne, State of Utah to wit:

The southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter of Section 5, Township 28 South, Range 3 East of the Salt Lake Base Meridian containing eighty acres. (This parcel is identified as Assessor Parcel Number 0-289)

IN WITNESS WHEREOF, the Personal Representatives of the Estate of Welby J. Van Dyke have signed and sealed these presents.

Judy Lefevre  
Judy Lefevre, Personal Representative

CERTIFICATE OF ACKNOWLEDGEMENT

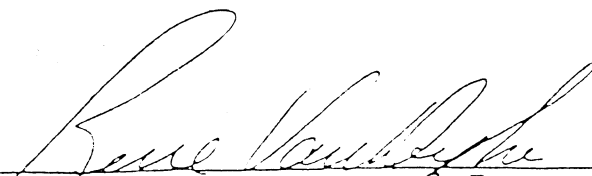
State of Utah }  
County of Salt Lake }

On Dec 13, 1996 before me appeared Judy Lefevre, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person executed the instrument.

Dorothy Thurman  
Notary Public



NOTARY PUBLIC  
DOROTHY THURMAN  
310 South Main Suite 308  
Salt Lake City, Utah 84101  
My Commission Expires  
April 12, 1997  
STATE OF UTAH

  
Rene Van Dyke, Personal Representative

CERTIFICATE OF ACKNOWLEDGEMENT

State of Utah     )  
County of Wayne    )

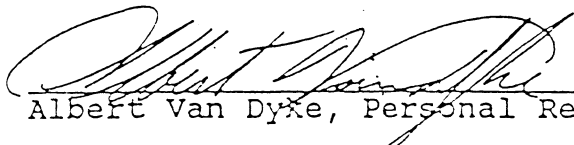
On Jan 10 1997, 1996 before me appeared Rene Van Dyke, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.



Notary Public  
88 North 100 East  
Log, Utah 84747  
My Commission Expires  
June 4, 1999  
State of Utah

  
Loma Blackburn     Seal  
Notary Public

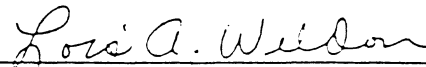
\*\*\*\*\*

  
Albert Van Dyke, Personal Representative

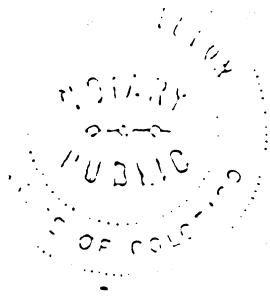
CERTIFICATE OF ACKNOWLEDGEMENT

State of Colorado    )  
County of Conejos    )

On Dec 31, 1996 before me appeared Albert Van Dyke, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.

  
Lora A. Wilson     Seal  
Notary Public

my commission expires 4/6/99



QUITCLAIM DEED

126315

THIS QUITCLAIM DEED is executed this 13TH day of DECEMBER, 1996.

KNOW ALL MEN BY THESE PRESENTS: Judy Lefevre, Rene Van Dyke, and Albert Van Dyke, Personal Representatives of the Estate of Welby J. Van Dyke of Wayne County, Utah according to instructions contained in the Last Will and Testament of Welby J. Van Dyke (dated the 6th day of February, 1980) do hereby remise, release and quitclaim unto the Welby J. Van Dyke Family Trust, dated the 6th day of February, 1980, Judy Lefevre, Rene Van Dyke, Albert Van Dyke, Co-Trustees forever all the rights, titles, interests and claims which the first party has in and to the following described parcel of land, and improvements and appurtenances thereto, in the County of Wayne, State of Utah to wit:

Commencing 68 rods North and 40 rods West of the southeast corner of the southwest quarter of Section 4, Township 28 south, Range 3 east, Salt Lake Base and Meridian. Thence West 16 rods, thence East 16 rods, thence south 12 rods to the beginning. Containing 1.2 acres. (Identified by Assessor's Parcel Number LY14)

IN WITNESS WHEREOF, the Personal Representatives of the Estate of Welby J. Van Dyke have signed and sealed these presents.

Judy Lefevre  
Judy Lefevre, Personal Representative

CERTIFICATE OF ACKNOWLEDGEMENT

State of Utah )  
County of Salt Lake )

On Dec 13, 1996 before me appeared Judy Lefevre, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in \*\*\*\*\*his authorized capacity, and that by her signature on the instrument the person executed the instrument.

Dorothy Thurman  
Notary Public



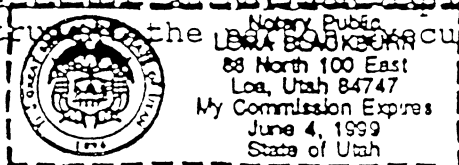
NOTARY PUBLIC  
DOROTHY THURMAN  
310 South Main, Suite 308  
Salt Lake City, Utah 84101  
My Commission Expires  
12-13-2007

Rene Van Dyke  
Rene Van Dyke, Personal Representative

CERTIFICATE OF ACKNOWLEDGEMENT

County of Utah )  
County of Wayne )

On January 12, 1996 before me appeared Rene Dyke personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.



Lona Blackburn Seal  
Notary Public

\*\*\*\*\*

Albert Van Dyke  
Albert Van Dyke, Personal Representative

CERTIFICATE OF ACKNOWLEDGEMENT

County of Colorado )  
County of Conejos )

On December 31, 1996 before me appeared Albert Dyke personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.

Lois A. Weldon Seal  
Notary Public

Commission expires 4/8/99

1/16/97  
OFFICE  
- 11/16/97



## PROMISSORY NOTE

I, Rene Van Dyke, herein referred to as Borrower, residing at 213 North 100 West, Lyman, Utah hereby promise to pay to the order of the Welby J. Van Dyke Family Trust, dated the 6th day of February, 1980, Judy Lefevre, Rene Van Dyke, Albert Van Dyke, Co-Trustees, the sum of seventeen thousand nine hundred eighty-nine and no/100ths (\$17,989.00) in exchange for all the rights, titles, interests and claims which the Welby J. Van Dyke Family Trust has in and to the equipment listed on Exhibit A plus the sum of one hundred twenty-four thousand and no/100ths dollars (\$124,000.00) in exchange for all the rights, titles, interests and claims which the Welby J. Van Dyke Family Trust has in and to the following described parcel of land, improvements and appurtenances thereto, including water shares, in the County of Wayne, State of Utah to wit:

The southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter of Section 5, Township 28 South, Range 3 East of the Salt Lake Base Meridian containing eighty acres. (This parcel is identified as Assessor Parcel Number 0-289)

1. Payments: Payments are payable to the Welby J. Van Dyke Family Trust in thirty equal consecutive annual installments of \$4,732.97 due on the first day of December until paid in full. The first payment is due December 1, 1997. Payments are to be made to Judy Lefevre, Trustee, at 3718 Sunnyvale Drive, West Valley City, Utah 84120 or to such person as may from time to time be designated by Trustees of said Trust.

2. Excuse of Payment: In the event of a calf crop failure, drought, disaster, or financial recession, or any other event

which might be termed a catastrophe, or beyond the control of Borrower, he may be excused from making said payments and the agreement shall be continued for one (1) additional year so that he can proceed with the purchase as contemplated by this provision; and while it is contemplated by the terms of the agreement that this special limitation will be invoked only one year at a time, there is no intention to limit the number of times that this provision can be invoked, provided that the operation is at a loss.

3. Prepayment of Note: This note may be prepaid, at any time, in whole or in part, without penalty.

4. Acceleration of Maturity: This note shall at the option of any holder hereof be immediately due and payable upon the failure to make any payment due hereunder within sixty (60) days of its due date subject to Provision 2 "Excuse of Payment".

5. Late Charge: Payment not made within ten (10) days of due date shall be subject to a late charge of ten percent (10%) of said payment.

6. Collection costs: In the event this note shall be in default, and placed with an attorney for collection, then the Borrower agrees to pay all reasonable costs of collection including attorney fees and court costs.

7. Assumption of Note: This note is not assumable without the written consent of the Trustees of the Welby J. Van Dyke Family Trust.

8. Assignability: Both parties agree that neither shall assign any right or interest in this Agreement without the

written permission of the other party. Any attempted assignment without the written permission shall be void and ineffective for all purposes. Furthermore, both parties agree that neither shall delegate any obligation which either has under this Agreement without the written permission of the other party. Any attempted delegation without written permission shall be void and ineffective for all purposes.

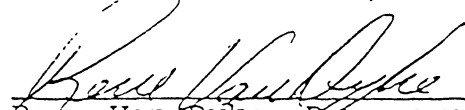
9. Waiver of Rights: The Borrower agrees to remain fully bound hereunder until this note shall be fully paid and waives demand, presentment and protest and all notices thereto and further agrees to remain bound, notwithstanding any extension, renewal, modification, waiver or other indulgence by any holder or upon the discharge or release of any obligor hereunder to or to this note, or upon the exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change of terms, hereunder granted by any holder hereof, shall be valid and binding upon the Borrower, notwithstanding the acknowledgement of the Borrower. This note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of Utah.

10. Transfer of Title: Title to the land, improvements and appurtenances noted above shall pass to Borrower upon payment in full of the amount noted above.

11. Costs of Ownership: All costs of ownership (including, but not limited to, property taxes, utilities, property insurance, liability insurance, irrigation district assessments, etc.) shall be borne by Borrower.

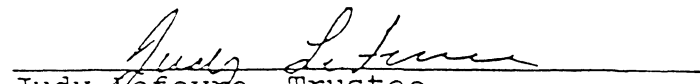
12. Indemnification of Trust: The Welby J. Van Dyke Family Trust and its Trustees shall not be liable for any damage or injury to Borrower, or any other person, or to any property, occurring on the noted premises or any part thereof, and the Borrower agrees to hold the Welby J. Van Dyke Family Trust and its Trustees harmless from any claim for damages, no matter how caused.

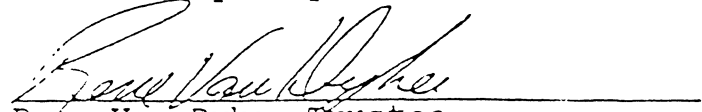
IN WITNESS WHEREOF, I have signed and sealed these presents.

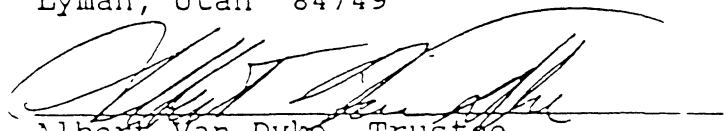
  
\_\_\_\_\_  
Rene Van Dyke, Borrower  
Post Office Box 1386  
213 North 100 West  
Lyman, Utah 84749

Date: April 2, 1997

For the Welby J. Van Dyke Family Trust:

  
\_\_\_\_\_  
Judy Lefevre, Trustee  
3718 Sunnyvale Drive  
West Valley City, Utah 84120

  
\_\_\_\_\_  
Rene Van Dyke, Trustee  
Post Office Box 1386  
213 North 100 West  
Lyman, Utah 84749

  
\_\_\_\_\_  
Albert Van Dyke, Trustee  
Post Office Box 327

128 Granada Street  
LaJara, Colorado 81140-0327

CERTIFICATE OF ACKNOWLEDGEMENT

State of Utah               )  
County of Wayne            )

On April 2,  
1997 before me appeared Rene Van Dyke personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the  
person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized  
capacity, and that by his signature on the instrument he executed  
this instrument.

Loma Blackburn

Seal  
Notary Public

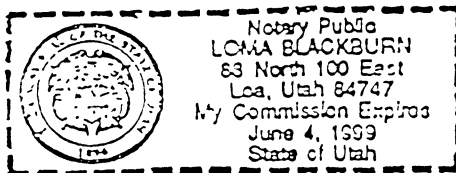


EXHIBIT A  
Agricultural Assets

Ford tractor (Model 860)	\$10.00
John Deere Cultipacker (Model EC950)	\$1,550.00
Sitrex Hay Rake (Model RP2-T)	\$275.00
Hesston Windrower (Model 6400)	\$1,550.00
International Hay Baler (Model 440T)	\$1.00
Sperry New Holland Hay Baler (Model 315)	\$900.00
John Deere Plow (4 bottom/2 way)	\$800.00
John Deere disk	\$900.00
International Windrower (Model 201)	\$1.00
Farmhand manure spreader (Model F43-A)	\$850.00
Richardton Multipurpose Dump Wagon (Model 1200)	\$2,550.00
John Deere Forage Harvester (Model E0038)	\$850.00
John Deere Grain Drill	\$500.00
McKee Danish Harrow (Model 3PH-2)	\$300.00
John Deer Combine (Model 55)	\$500.00
Dearborn Sickle Mower	\$1.00
Scraper Blade	\$1.00
Terry Travel trailer (1972)	\$700.00
Hutchinson 30' by 6" grain elevator	\$750.00
1981 Ford Truck (Model F700)	\$3,200.00
Hand sprinkler line	\$150.00
Dual wheels for tractor	\$350.00
Welby's share of bale wagon	\$1,000.00
Potato digger	\$50.00
1975 Chevrolet truck	\$100.00
Ford plow (3 bottom)	\$150.00
Total:	\$17,989.00

CONVEYANCE

AS PART OF THE PROMISSORY NOTE ISSUED TO RENE VAN DYKE on the 2nd day of APRIL, 1997, we, the undersigned Trustees of the Welby J. Van Dyke Family Trust, hereby convey ownership of the equipment listed on Exhibit A to Rene Van Dyke of Lyman, Utah. This equipment was part of the Welby J. Van Dyke Family Trust.

We warrant and represent the Estate has good title to said property, we have full authority to transfer the same and that said goods and chattels are being transferred free and clear of all liens, encumbrances, liabilities and adverse claims, of every kind and description.

The Estate warrants it shall fully defend, protect, indemnify and save harmless Rene Van Dyke, his lawful successors and assigns from any and all adverse claim, which may be made by any party against said goods.

Said goods are being conveyed in their present condition "as is" and "where is".

Signed this 9th day of APRIL, 1997.

Judy Lefevre  
Judy Lefevre  
Personal Representative

Rene Van Dyke  
Rene Van Dyke  
Personal Representative

Albert Van Dyke  
Albert Van Dyke  
Personal Representative

STATE OF UTAH  
COUNTY OF WAYNE

ON 2nd April 1997 BEFORE ME APPEARED RENE VAN DYKE PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT HE EXECUTED THIS INSTRUMENT.

Loma Blackburn SEAL  
NOTARY PUBLIC

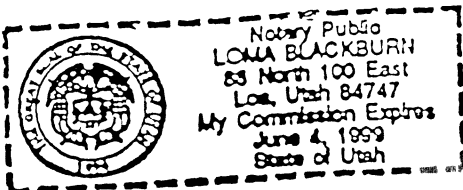




EXHIBIT A  
Agricultural Assets

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John Deere Cultipacker (Model EO950)	\$1,550.00
Sitrex Hay Rake (Model RP2-T)	\$275.00
Hesston Windrower (Model 6400)	\$1,550.00
International Hay Baler (Model 440T)	\$1.00
Sperry New Holland Hay Baler (Model 315)	\$900.00
John Deere Plow (4 bottom/2 way)	\$800.00
John Deere disk	\$900.00
International Windrower (Model 201)	\$1.00
Farmhand manure spreader (Model F43-A)	\$850.00
Richardton Multipurpose Dump Wagon (Model 1200)	\$2,550.00
John Deere Forage Harvester (Model E0038)	\$850.00
John Deere Grain Drill	\$500.00
McKee Danish Harrow (Model 3PH-2)	\$300.00
John Deer Combine (Model 55)	\$500.00
Dearborn Sickle Mower	\$1.00
Scraper Blade	\$1.00
Terry Travel trailer (1972)	\$700.00
Hutchinson 30' by 6" grain elevator	\$750.00
1981 Ford Truck (Model F700)	\$3,200.00
Hand sprinkler line	\$150.00
Dual wheels for tractor	\$350.00
Welby's share of bale wagon	\$1,000.00
Potato digger	\$50.00
1975 Chevrolet truck	\$100.00
Ford plow (3 bottom)	\$150.00
Total:	\$17,989.00

## PROMISSORY NOTE

I, Albert Van Dyke, herein referred to as Borrower, residing at 128 Granada Street, LaJara, Colorado, 81140 hereby promise to pay to the order of the Welby J. Van Dyke Family Trust, dated the 6th day of February, 1980, Judy Lefevre, Rene Van Dyke, Albert Van Dyke, Co-Trustees, the sum of thirty-seven thousand, five hundred and no/100ths dollars (\$37,500.00) in exchange for all the rights, titles, interests and claims which the Welby J. Van Dyke Family Trust has in and to the following described parcel of land, improvements and appurtenances thereto, in the County of Wayne, State of Utah to wit:

Commencing 68 rods North and 40 rods West of the southeast corner of the southwest quarter of Section 4, Township 28 south, Range 3 east, Salt Lake Base and Meridian. Thence West 16 rods, thence East 16 rods, thence south 12 rods to the beginning. Containing 1.2 acres. (Identified by Assessor's Parcel Number LY14)

1. Payments: Payments are payable to the Welby J. Van Dyke Family Trust in thirty equal consecutive annual installments of \$1,250.00 due on the first day of December until paid in full. The first payment is due December 1, 1997. Payments are to be made to Judy Lefevre, Trustee, at 3718 Sunnyvale Drive, West Valley City, Utah 84120 or to such person as may from time to time be designated by Trustees of said Trust.

2. Excuse of Payment: In the event of a crop failure, drought, disaster, or financial recession, or any other event which might be termed a catastrophe, or beyond the control of Borrower, he may be excused from making said payments and the agreement shall be continued for one (1) additional year so that

he can proceed with the purchase as contemplated by this provision; and while it is contemplated by the terms of the agreement that this special limitation will be invoked only one year at a time, there is no intention to limit the number of times that this provision can be invoked, provided that the operation is at a loss.

3. Prepayment of Note: This note may be prepaid, at any time, in whole or in part, without penalty.

4. Acceleration of Maturity: This note shall at the option of any holder hereof be immediately due and payable upon the failure to make any payment due hereunder within sixty (60) days of its due date subject to Provision 2 "Excuse of Payment".

5. Payment not made within ten (10) days of due date shall be subject to a late charge of ten percent (10%) of said payment.

6. Collection costs: In the event this note shall be in default, and placed with an attorney for collection, then Borrower agrees to pay all reasonable costs of collection including attorney fees and court costs.

7. Assumption of Note: This note is not assumable without the written consent of the Trustees of the Welby J. Van Dyke Family Trust.

8. Assignability: Both parties agree that neither shall assign any right or interest in this Agreement without the written permission of the other party. Any attempted assignment without the written permission shall be void and ineffective for all purposes. Furthermore, both parties agree that neither shall delegate any obligation which either has under this Agreement

without the written permission of the other party. Any attempted delegation without written permission shall be void and ineffective for all purposes.

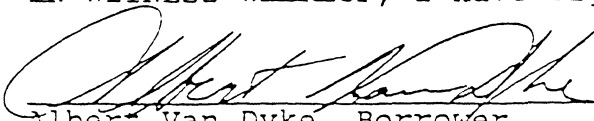
9. Waiver of Rights: The Borrower agrees to remain fully bound hereunder until this note shall be fully paid and waives demand, presentment and protest and all notices thereto and further agrees to remain bound, notwithstanding any extension, renewal, modification, waiver or other indulgence by any holder or upon the discharge or release of any obligor hereunder to or to this note, or upon the exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change of terms, hereunder granted by any holder hereof, shall be valid and binding upon the Borrower, notwithstanding the acknowledgement of the Borrower. This note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of Utah.

10. Transfer of Title: Title to the land, improvements and appurtenances noted above shall pass to Borrower upon payment in full of the amount noted above.

11. Costs of Ownership: All costs of ownership (including, but not limited to, property taxes, utilities, property insurance, liability insurance, irrigation district assessments, etc.) shall be borne by Borrower.

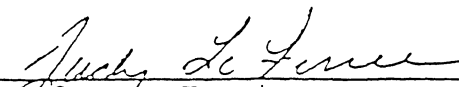
12. Indemnification of Trust: The Welby J. Van Dyke Family Trust and its Trustees shall not be liable for any damage or injury to Borrower, or any other person, or to any property, occurring on the noted premises or any part thereof, and the Borrower agrees to hold the Welby J. Van Dyke Family Trust and its Trustees harmless from any claim for damages, no matter how caused.

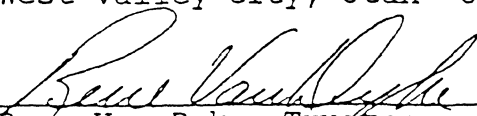
IN WITNESS WHEREOF, I have signed and sealed these presents.


  
Albert Van Dyke, Borrower  
Post Office Box 327  
128 Granada Street  
LaJara, Colorado 81140-0327

Date: Mar. 27, 1997

For the Welby J. Van Dyke Family Trust:

  
Judy Lefevre, Trustee  
3718 Sunnyvale Drive  
West Valley City, Utah 84120

  
Rene Van Dyke, Trustee  
Post Office Box 1386  
213 North 100 West  
Lyman, Utah 84749

  
Albert Van Dyke, Trustee  
Post Office Box 327  
128 Granada Street  
LaJara, Colorado 81140-0327

CERTIFICATE OF ACKNOWLEDGEMENT

State of Colorado     )  
County of Conejos    )

on March 27,

1997 before me appeared Albert Van Dyke personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he executed this instrument.

Lori A. Walton Seal  
Notary Public

my commission expires 4/8/99

LAST WILL AND TESTAMENT

OF

WELBY J. VAN DYKE

I, WELBY J. VAN DYKE, a resident of Lyman, Utah, being of sound and disposing mind, and not acting under duress, menace, fraud or undue influence of any person whatsoever, do make, publish and declare the following to be my Last will and Testament, and I hereby revoke all previous wills and codicils which I have heretofore made.

1. Appointment. I appoint RENE VAN DYKE of Lyman, Utah, ALBERT VAN DYKE of Lyman, Utah, and Judy Lefevre of Granger, Utah, as personal representatives without bond of this will and my estate. If any of the individuals named as personal representatives fails to serve for any reason at any time, the remaining individuals shall continue to serve.

2. Thirty-Day Survivorship. In determining beneficiaries of this will, a beneficiary shall be deemed to have survived me, any other person, a point in time, or an event, as the case may be, only if such survivorship is for at least thirty (30) days. Provided, however, the preceding sentence shall not apply in any case where its application would cause any otherwise valid provision of this will to be void because of the rule against perpetuities, the rule limiting suspension of the power of alienation, the rule against accumulations, or any similar rule.

3. Gift of Personal Effects. I give all my personal and household effects of a tangible personal property nature, such as jewelry, clothing, furniture, silver, books and pictures, and all insurance policies thereon plus proceeds therefrom in equal shares to my eleven (11) children: LEON VAN DYKE, KARL VAN DYKE, NEWELL VAN DYKE, NETA TOPPHAN, JUDY LEFEVRE, JEANINE POOL, RONALD VAN DYKE, RICHARD VAN DYKE, RENE VAN DYKE, ALBERT VAN DYKE, and JOE VAN DYKE. If any of my children named above shall not be

W. J. V.

*[Handwritten signatures]*

then surviving, his or her share shall pass to his or her issue per stirpes and not per capita. But if none of my issue survives me said property shall be part of my residuary estate.

My tangible personal property of a business or investment nature, such as office files, cattle, trucks and other such items broadly construed, shall not be governed by this paragraph but shall be part of my residuary estate.

1. Residuary Estate. 'My residuary estate' means all real and personal property, whether community or separate and wherever situated, which I may own at my death (excluding property over which I may have a power of appointment) and which I have not disposed of by other paragraphs of this will. I give all my residuary estate as follows:

4.10. Debts and Taxes. My debts, administration expenses, funeral expenses, and all taxes payable by reason of my death shall be paid out of my residuary estate. Provided, however, my personal representative shall have the power to determine whether or not any or all of my secured debts shall be paid. Provided, further, however, all of the aforementioned debts, expenses, and taxes payable because of the taxability of any gifts in contemplation of death, retained life estates, transfers taking effect at death, revocable transfers, annuities, joint tenancies, powers of appointment, life insurance proceeds, or other nonprobate assets shall be paid proportionately by the recipient of such assets and that any of the said hereinbefore described taxes payable because of the taxability of any part of my probate estate shall be paid out of my residuary estate, subject to one exception. The recipients of life insurance proceeds and power of appointment property shall pay their share of federal estate taxes as provided by federal law.

5.20. Remainder of Residuary Estate Poured Over Into Living Trust. I give the remainder of my residuary estate to REM VAN DYKE of Lyman, Utah, ALBERT VAN DYKE of Lyman, Utah, and JUDY

W. J. V.

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LeFEVRE of Granger, Utah, or their successor, as Co-trustees of that certain trust designated as The Welb, J. Van Dyke Family Living Trust established February 6, 1980, of which I am the Settlor and the aforementioned ENL VAN DYKE, ALBERT VAN DYKE and JUDY LeFEVRE are Co-trustees. I direct that the remainder of my residuary estate shall be held, administered, and distributed as a part of that trust according to the terms of that trust and any amendments made to it prior to my death. It is my intention not to create a separate trust by this will nor to subject The Welb, J. Van Dyke Family Living Trust nor the property added by this will to the jurisdiction of the probate court.

I, WELBY J. VAN DYKE, the testator, sign my name to this instrument this 6th day of February, 1980, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I will sign it willingly, that I execute it as my free and voluntary act for the purposes expressed in it, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Welby J. Van Dyke  
WELBY J. VAN DYKE, Testator

We, GREGORY L. JEN and Wendy D. Moore

the witnesses, sign our names to this instrument of writing consisting of this and three (3) other pages, being first duly sworn and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his Last Will and that he signs it willingly, and that each of us, in the presence and hearing of the testator and of each other, hereby signs this will as witness to the testator's signing, and that each of us signs this will at the request of the testator, and that to the best of our knowledge the testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue

WJD

XHA DLM

influence.

<u>Gregory F. Seal</u> Witness	<u>Atty. &amp; Morrell</u> Witness
<u>SANDY UTAH</u> Address	<u>Taylorville Utah</u> Address

STATE OF UTAH )  
(ss.  
COUNTY OF SALT LAKE)

Subscribed and sworn to, and acknowledged before me by  
WELBY J. VAN DYKE, the testator, and subscribed and sworn to  
before me by GREGORY L. SEAL and Atty. & Morrell  
witnesses, this 6 day of FEB 1980.

Gregory L. Seal  
Notary Public  
Residing at: SANDY, UTAH

My commission expires:

SEPT. 29, 1981

W. J. V. WJVM

Signed

THE WELBY J. VAN DYKE

FAMILY LIVING TRUST

THIS TRUST AGREEMENT is executed this 6th day of February, 1980, between WELBY J. VAN DYKE of Lyman, Utah, hereinafter called "Settlor", and PENE VAN DYKE of Lyman, Utah, ALBERT VAN DYKE of Lyman, Utah, and JUDY LEFEBVRE of Granger, Utah, as Co-trustees, sometimes hereinafter referred to by the singular designation "Trustee"

1. Trust Property. Settlor hereby declares that Settlor owns life insurance policies and/or annuity contracts listed in the signed schedule annexed hereto (and constituting a part hereof), that each such policy contemporaneously herewith is being made payable to Trustee as primary or contingent beneficiary, and that, except as might otherwise be provided on the signed schedule, said life insurance policies and/or annuity contracts contemporaneously are being delivered to the possession of the Trustee. All rights received by Trustee as a result of such beneficiary designation, including policy proceeds, shall constitute the trust property and shall be held in trust for the uses and purposes hereinafter expressed and subject to the conditions of the trust hereinafter provided. The trust property also shall include all property received as a beneficiary of Settlor's will; and all other assets presently or later transferred to the trust. Settlor reserves the right to Settlor or to any other person at any time, by deed, will, or otherwise, to add to the principal of the trust estate created herein and any property so added shall be held, administered, and distributed under the terms of this agreement.

2. Basically an Inter Vivos Revocable Unfunded Life Insurance Trust Which Also is Intended as a Pour-Over Will Receiptable. Basically, Settlor intends to create an inter vivos revocable unfunded life insurance trust. Settlor reserves the right (without the permission of trustee, any beneficiary, or any

or other person) to revoke this trust in whole or in part by written instrument or other action clearly inconsistent with the continuance of all or a portion of this trust (such as a change of all or a portion of the life insurance policy beneficiary designations to someone other than Trustee). Settlor reserves the right (without the permission of any Trustee, any beneficiary, or any other person) to amend this trust in any manner whatsoever. As a part of the powers to amend or revoke the trust, Settlor, with respect to any life insurance policy, retirement contract or annuity, or similar asset, specifically reserves the power to change the beneficiary, to change the benefit option, to borrow on any cash value, to terminate any policy or contract, to receive dividends or other payments, and to exercise any other rights, powers, privileges, or options. In conjunction with this Trust, Settlor will hereafter or contemporaneously herewith execute a will which pours over certain assets to this Trust.

3. Trustee Resignations, Bond, Etc.

3.10. Trustee Resignations, Successors. If any of the individuals named as Co-trustees fails to serve as a Co-trustee for any reason at any time, the remaining individuals shall serve alone. A Co-trustee may resign by written notice to the income beneficiaries of the effective date, whereupon the remaining individuals shall continue to serve as heretofore declared.

3.20. No Bond or Other Security. No bond or other security shall be required of the original Trustee or any successors thereto. If, despite Settlor's directions, a bond is required by law insofar as it lies within Settlor's power, Settlor directs that no surety be required on such bond.

3.30. Compensation. Trustee or the successor trustee shall be compensated for services as such trustee at the then prevailing rates for similar services to estates and trusts of a similar nature and size.

4. Dispositive Provisions. The Trustee shall hold,

manage, invest and reinvest the trust assets, and shall collect the income thereof and shall dispose of the net income and principal as follows:

4.10. Income to Settlor. During the lifetime of the Settlor, Trustee shall pay to the Settlor all of the net income at times fixed but at least as often as annually, and, if practicable, in regular monthly or quarterly/ periodical payments. In addition to the income, Settlor hereby expressly reserves and retains the right, at any time and from time to time, by a notice in writing signed by Settlor and delivered to the Trustee to withdraw such amounts from the principal of the Trust as Settlor may designate. In the event that Settlor becomes incapacitated, Trustee may use as much of the income and principal of the trust for the benefit of Settlor as Trustee determines shall be necessary for the support, care and maintenance of Settlor.

4.20. Family Trust. Upon the death of Settlor, the entire principal of the Family Trust shall pass as follows: Trustee shall divide the trust principal into as many equal shares as there are children of Settlor then living and children of Settlor then deceased having issue then living. The equal shares shall be allocated by Trustee as follows:

- (1) To each living child of Settlor--one (1) full equal share.
- (2) To each group composed of the living issue of a deceased child of Settlor--one (1) full equal share with the allocation to be in per stirpes shares.

Each share so allocated shall be distributed to him, her, or them free and clear of trust. Provided, further, however, Settlor's sons RENE VAN DYKE, ALBERT VAN DYKE and JOE VAN DYKE may take their share in the form of agricultural assets including but not limited to real estate, livestock and equipment. If Settlor's sons' shares are not large enough to accommodate all of such agricultural assets, Settlor's sons may purchase said agricultural

assets from Settlor's other children for an amount equal to the fair market value as determined in the Federal Estate Tax proceeding occurring on Settlor's death. In the event Settlor's sons desire to exercise the option to purchase contained herein, they shall give written notice to the other beneficiaries within ninety (90) days of the death of Settlor. In the event of such a purchase, Settlor's sons may deliver a promissory note or notes payable to Settlor's other beneficiaries. The note or notes shall be paid in equal annual installments over a period not to exceed thirty (30) years with no interest. In the event of a calf crop failure, drought, disaster, or financial recession, or any other event which might be termed a catastrophe, or beyond the control of Settlor's sons RENE VAN DYKE, ALBERT VAN DYKE and JOE VAN DYKE, he or they may be excused from making said payments and the agreement shall be continued for one (1) additional year so that he or they can proceed with the purchase as contemplated by this provision; and while it is contemplated by the terms of this agreement that this special limitation will be invoked only one year at a time, there is no intention to limit the number of times that this provision can be invoked, provided that the operation is at a loss. But if there be no living beneficiaries of the enumerated allocations, the principal of the trust shall be distributed to the person or persons who would be Settlor's heirs at law if Settlor had survived the termination of this trust, and then died, determined as of the date of such termination and according to the laws of Utah then in force respecting intestate succession.

5. Particular Instructions to Trustee.

5.10. Thirty-Day Survivorship. In determining beneficiaries of the trusts created herein, a beneficiary shall be deemed to have survived the Settlor, an insured, any other person, a point in time, or an event, as the case may be, only if such survivorship is for at least thirty (30) days. Provided, however,

this clause shall not apply in any case where its application would cause any provision of this instrument, which would otherwise be valid, to be void under any applicable rule against perpetuities, rule limiting suspension of the power of alienation, or other similar rule.

5.20. Mingling Separate Trusts. Trustee is authorized to mingle the properties of the separate trusts created by this trust, allotting to each separate trust an undivided interest in the mingled funds, which undivided interest always shall be equal to that trust's proportionate contribution (as adjusted from time to time as a result of accumulations of income, payments of principal, additions to principal, etc.) to the mingled funds. It is Settlor's intention that each trust beneficiary shall have a separate and distinct trust, and the provisions of this paragraph 5.20 are merely designed to permit Trustee to avoid a division in kind in accomplishing Settlor's intention.

5.30. Termination of Trusts. If at any time any separate trust has a principal of less than \$5,000 value, then Trustee shall deliver the entire principal to the separate trust beneficiary. If the beneficiary is not able to manage his or her affairs (in Trustee's sole discretion), then Trustee may, in Trustee's sole discretion, deliver the separate trust principal to the legal guardian of said beneficiary.

6. Trustee's Powers. Without regard to any legal restrictions otherwise applicable to trustees, the Trustee is authorized and empowered, in Trustee's sole and absolute discretion, to exercise the following discretionary powers as well as any other powers conferred by law, not inconsistent with other provisions of this trust:

6.10. To retain, whether originally a part of the trust estate or subsequently acquired, and to purchase or otherwise acquire and to retain, any property, whether or not such property is authorized for investment by law, or is unsecured, unproductive, or of a wasting nature, all without diversification as to kind and amount.

6.20. To transfer, sell, exchange, partition, lease, mortgage, create a security interest in, pledge, give options upon, or otherwise dispose of any property

at any time held by Trustee, at public or private sale or otherwise, for cash or other consideration or on credit, and upon such terms and conditions, with or without security, and for such price, as Trustee may determine.

6.30. To hold any part of the trust estate in cash or uninvested for any period deemed advisable.

6.40. To extend, modify, or waive the terms of any note and mortgage at any time forming part of the trust; to foreclose any such mortgage or take title to the property securing it by deed in lieu of foreclosure or otherwise; to protect or redeem any such property from forfeiture for nonpayment of taxes or other liens; and generally to exercise as to such bond and mortgage or such property all powers that an absolute owner might exercise.

6.50. To exercise any option, right, or privilege to convert bonds, notes, corporate shares, or other securities, or to subscribe for additional or other bonds, notes, corporate shares, or other securities; to make such conversions or subscriptions; to make payments therefor, and to advance or borrow money for the purpose of exercising any such option, right or privilege; and to hold as investments such bonds, notes, corporate shares, and other securities so acquired, notwithstanding that they are not of a character authorized for investments by law or by other provisions of this agreement.

6.60. To vote any corporate shares held by Trustee in person, through Trustee's designees, or by proxy, with or without power of substitution, and to execute authority or proxies to one or more designees or nominees.

6.70. To borrow money for any trust purpose and to pledge all or part of the trust estate to secure such borrowing, without incurring any personal liability therefor.

6.80. To pay, extend, renew, modify, or compromise, upon such terms as Trustee may determine, and upon such evidence as Trustee may deem sufficient, any obligation or claim, including taxes, either in favor of or against the trust estate.

6.90. To hold or register any securities or other property of the trust estate in the name of a nominee or in such form as to pass by delivery, with or without indicating the fiduciary character of such securities or other property.

6.91. To divide and distribute the trust estate in kind or in money, or partly in each, or by way of undivided interests, and for such purposes to value any property to be thus divided or distributed at fair market values at the date or dates of distribution.

7. Accounting by Trustee. The Trustee shall keep all accounts and records of the trusts created herein and annually, or



oftener, shall render to the current income beneficiaries statements showing all receipts, disbursements, and distributions of both principal and income of the trust estate.

8. Spendthrift Clause. No interest of any beneficiary under any trusts created herein either in income or in principal shall be subject to pledge, assignment, sale, or transfer in any manner, nor shall any beneficiary have the power in any manner to anticipate, charge or encumber his interest, either in income or principal, nor shall such interest of any beneficiary be liable or subject in any manner for the debts, contracts, liabilities, engagements, or torts of such beneficiary.


9. Debts, Taxes and Expenses. Upon the death of the Settlor, the Trustee shall pay all debts, taxes and expenses including funeral expenses and last illness expenses resulting from the death of the Settlor, unless Settlor directs otherwise in Settlor's will. If any executor, administrator, or other person acting in a fiduciary capacity shall have paid any estate, inheritance, or succession tax upon or with respect to any or all of the trust estate required to be included in the gross estate of the Settlor, the Trustee shall reimburse such executor, administrator, or other person acting in a fiduciary capacity for the amount of such taxes unless Settlor directs otherwise in Settlor's will.

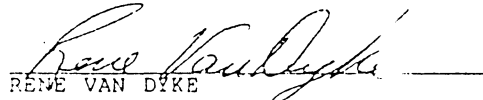
10. Situs. This Trust shall not take effect until the execution of this agreement by both the Settlor and the Trustee, and it shall be governed and construed in all respects according to the laws of the State of Utah.


11. Miscellaneous. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this trust agreement in accord with Settlor's manifest intention. Likewise, if either the feminine, masculine, or neuter

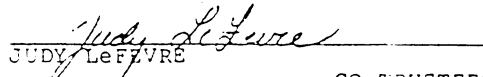
gender should be one of the other genders, it shall be so treated.  
The paragraph and subparagraph headings used herein are merely  
indices for Settlor's own use and shall not be considered in the  
interpretation of this trust agreement.

Signed the day and year first above written.

  
WELBY J. VAN DYKE                      SETTLOR

  
RENE VAN DYKE

  
ALBERT VAN DYKE

  
JUDY LEFEVRE                      CO-TRUSTEES

THE WELBY J. VAN DYKE

FAMILY LIVING TRUST

SCHEDULE OF LIFE INSURANCE AND OTHER ASSETS

<u>Company</u>	<u>Policy Number</u>	<u>Face Amount</u>
----------------	--------------------------	------------------------

SIGNED this 10 day of FEB, 1980.

\_\_\_\_\_  
WELBY J. VAN DYKE

SETTLOR

\_\_\_\_\_  
RENE VAN DYKE

\_\_\_\_\_  
ALBERT VAN DYKE

\_\_\_\_\_  
JUDY LeFEVRE

CO-TRUSTEES

THE WELBY J. VAN DYKE

FAMILY LIVING TRUST

THIS TRUST AGREEMENT is executed this 6th day of February, 1980, between WELBY J. VAN DYKE of Lyman, Utah, hereinafter called "Settlor", and RENE VAN DYKE of Lyman, Utah, ALBERT VAN DYKE of Lyman, Utah, and JUDY LeFEVRE of Granger, Utah, as Co-trustees, sometimes hereinafter referred to by the singular designation "Trustee".

1. Trust Property. Settlor hereby declares that Settlor owns life insurance policies and/or annuity contracts listed in the signed schedule annexed hereto (and constituting a part hereof), that each such policy contemporaneously herewith is being made payable to Trustee as primary or contingent beneficiary, and that, except as might otherwise be provided on the signed schedule, said life insurance policies and/or annuity contracts contemporaneously are being delivered to the possession of the Trustee. All rights received by Trustee as a result of such beneficiary designation, including policy proceeds, shall constitute the trust property and shall be held in trust for the uses and purposes hereinafter expressed and subject to the conditions of the trust hereinafter provided. The trust property also shall include all property received as a beneficiary of Settlor's will; and all other assets presently or later transferred to the trust. Settlor reserves the right to Settlor or to any other person at any time, by deed, will, or otherwise, to add to the principal of the trust estate created herein and any property so added shall be held, administered, and distributed under the terms of this agreement.

2. Basically an Inter Vivos Revocable Unfunded Life Insurance Trust Which Also is Intended as a Pour-Over Will Receiptable. Basically, Settlor intends to create an inter vivos revocable unfunded life insurance trust. Settlor reserves the right (without the permission of trustee, any beneficiary, or any

other person) to revoke this trust in whole or in part by written instrument or other action clearly inconsistent with the continuance of all or a portion of this trust (such as a change of all or a portion of the life insurance policy beneficiary designations to someone other than Trustee). Settlor reserves the right (without the permission of any Trustee, any beneficiary, or any other person) to amend this trust in any manner whatsoever. As a part of the powers to amend or revoke the trust, Settlor, with respect to any life insurance policy, retirement contract or annuity, or similar asset, specifically reserves the power to change the beneficiary, to change the benefit option, to borrow on any cash value, to terminate any policy or contract, to receive dividends or other payments, and to exercise any other rights, powers, privileges, or options. In conjunction with this Trust, Settlor will hereafter or contemporaneously herewith execute a will which pours over certain assets to this Trust.

3. Trustee Resignations, Bond, Etc.

3.10. Trustee Resignations, Successors. If any of the individuals named as Co-trustees fails to serve as a Co-trustee for any reason at any time, the remaining individuals shall serve alone. A Co-trustee may resign by written notice to the income beneficiaries of the effective date, whereupon the remaining individuals shall continue to serve as heretofore declared.

3.20. No Bond or Other Security. No bond or other security shall be required of the original Trustee or any successors thereto. If, despite Settlor's directions, a bond is required by law insofar as it lies within Settlor's power, Settlor directs that no surety be required on such bond.

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4.20. Family Trust. Upon the death of Settlor, the entire principal of the Family Trust shall pass as follows: Trustee shall divide the trust principal into as many equal shares as there are children of Settlor then living and children of Settlor then deceased having issue then living. The equal shares shall be allocated by Trustee as follows:

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(2) To each group composed of the living issue of a deceased child of Settlor--one (1) full equal share with the allocation to be in per stirpes shares.

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assets from Settlor's other children for an amount equal to the fair market value as determined in the Federal Estate Tax proceeding occurring on Settlor's death. In the event Settlor's sons desire to exercise the option to purchase contained herein, they shall give written notice to the other beneficiaries within ninety (90) days of the death of Settlor. In the event of such a purchase, Settlor's sons may deliver a promissory note or notes payable to Settlor's other beneficiaries. The note or notes shall be paid in equal annual installments over a period not to exceed thirty (30) years with no interest. In the event of a calf crop failure, drought, disaster, or financial recession, or any other event which might be termed a catastrophe, or beyond the control of Settlor's sons FENE VAN DYKE, ALBERT VAN DYKE and JOE VAN DYKE, he or they may be excused from making said payments and the agreement shall be continued for one (1) additional year so that he or they can proceed with the purchase as contemplated by this provision; and while it is contemplated by the terms of this agreement that this special limitation will be invoked only one year at a time, there is no intention to limit the number of times that this provision can be invoked, provided that the operation is at a loss. But if there be no living beneficiaries of the enumerated allocations, the principal of the trust shall be distributed to the person or persons who would be Settlor's heirs at law if Settlor had survived the termination of this trust, and then died, determined as of the date of such termination and according to the laws of Utah then in force respecting intestate succession.

5. Particular Instructions to Trustee.

5.10. Thirty-Day Survivorship. In determining beneficiaries of the trusts created herein, a beneficiary shall be deemed to have survived the Settlor, an insured, any other person, a point in time, or an event, as the case may be, only if such survivorship is for at least thirty (30) days. Provided, however,

this clause shall not apply in any case where its application would cause any provision of this instrument, which would otherwise be valid, to be void under any applicable rule against perpetuities, rule limiting suspension of the power of alienation, or other similar rule.

5.20. Mingling Separate Trusts. Trustee is authorized to mingle the properties of the separate trusts created by this trust, allotting to each separate trust an undivided interest in the mingled funds, which undivided interest always shall be equal to that trust's proportionate contribution (as adjusted from time to time as a result of accumulations of income, payments of principal, additions to principal, etc.) to the mingled funds. It is Settlor's intention that each trust beneficiary shall have a separate and distinct trust, and the provisions of this paragraph 5.20 are merely designed to permit Trustee to avoid a division in kind in accomplishing Settlor's intention.

5.30. Termination of Trusts. If at any time any separate trust has a principal of less than \$5,000 value, then Trustee shall deliver the entire principal to the separate trust beneficiary. If the beneficiary is not able to manage his or her affairs (in Trustee's sole discretion), then Trustee may, in Trustee's sole discretion, deliver the separate trust principal to the legal guardian of said beneficiary.

6. Trustee's Powers. Without regard to any legal restrictions otherwise applicable to trustees, the Trustee is authorized and empowered, in Trustee's sole and absolute discretion, to exercise the following discretionary powers as well as any other powers conferred by law, not inconsistent with other provisions of this trust:

6.10. To retain, whether originally a part of the trust estate or subsequently acquired, and to purchase or otherwise acquire and to retain, any property, whether or not such property is authorized for investment by law, or is unsecured, unproductive, or of a wasting nature, all without diversification as to kind and amount.

6.20. To transfer, sell, exchange, partition, lease, mortgage, create a security interest in, pledge, give options upon, or otherwise dispose of any property



at any time held by Trustee, at public or private sale or otherwise, for cash or other consideration or on credit, and upon such terms and conditions, with or without security, and for such price, as Trustee may determine.

6.30. To hold any part of the trust estate in cash or uninvested for any period deemed advisable.

6.40. To extend, modify, or waive the terms of any note and mortgage at any time forming part of the trust; to foreclose any such mortgage or take title to the property securing it by deed in lieu of foreclosure or otherwise; to protect or redeem any such property from forfeiture for nonpayment of taxes or other liens; and generally to exercise as to such bond and mortgage or such property all powers that an absolute owner might exercise.

6.50. To exercise any option, right, or privilege to convert bonds, notes, corporate shares, or other securities, or to subscribe for additional or other bonds, notes, corporate shares, or other securities; to make such conversions or subscriptions; to make payments therefor, and to advance or borrow money for the purpose of exercising any such option, right or privilege; and to hold as investments such bonds, notes, corporate shares, and other securities so acquired, notwithstanding that they are not of a character authorized for investments by law or by other provisions of this agreement.

6.60. To vote any corporate shares held by Trustee in person, through Trustee's designees, or by proxy, with or without power of substitution, and to execute authority or proxies to one or more designees or nominees.

6.70. To borrow money for any trust purpose and to pledge all or part of the trust estate to secure such borrowing, without incurring any personal liability therefor.

6.80. To pay, extend, renew, modify, or compromise, upon such terms as Trustee may determine, and upon such evidence as Trustee may deem sufficient, any obligation or claim, including taxes, either in favor of or against the trust estate.

6.90. To hold or register any securities or other property of the trust estate in the name of a nominee or in such form as to pass by delivery, with or without indicating the fiduciary character of such securities or other property.

6.91. To divide and distribute the trust estate in kind or in money, or partly in each, or by way of undivided interests, and for such purposes to value any property to be thus divided or distributed at fair market values at the date or dates of distribution.

7. Accounting by Trustee. The Trustee shall keep all accounts and records of the trusts created herein and annually, or

oftener, shall render to the current income beneficiaries statements showing all receipts, disbursements, and distributions of both principal and income of the trust estate.

8. Spendthrift Clause. No interest of any beneficiary under any trusts created herein either in income or in principal shall be subject to pledge, assignment, sale, or transfer in any manner, nor shall any beneficiary have the power in any manner to anticipate, charge or encumber his interest, either in income or principal, nor shall such interest of any beneficiary be liable or subject in any manner for the debts, contracts, liabilities, engagements, or torts of such beneficiary.


9. Debts, Taxes and Expenses. Upon the death of the Settlor, the Trustee shall pay all debts, taxes and expenses including funeral expenses and last illness expenses resulting from the death of the Settlor, unless Settlor directs otherwise in Settlor's will. If any executor, administrator, or other person acting in a fiduciary capacity shall have paid any estate, inheritance, or succession tax upon or with respect to any or all of the trust estate required to be included in the gross estate of the Settlor, the Trustee shall reimburse such executor, administrator, or other person acting in a fiduciary capacity for the amount of such taxes unless Settlor directs otherwise in Settlor's will.

10. Situs. This Trust shall not take effect until the execution of this agreement by both the Settlor and the Trustee, and it shall be governed and construed in all respects according to the laws of the State of Utah.

11. Miscellaneous. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this trust agreement in accord with Settlor's manifest intention. Likewise, if either the feminine, masculine, or neuter

gender should be one of the other genders, it shall be so treated.  
The paragraph and subparagraph headings used herein are merely  
indices for Settlor's own use and shall not be considered in the  
interpretation of this trust agreement.

Signed the day and year first above written.

  
WELBY J. VAN DYKE  
SETTLOR

\_\_\_\_\_  
RENE VAN DYKE

\_\_\_\_\_  
ALBERT VAN DYKE

\_\_\_\_\_  
JUDY LeFEVRE

CO-TRUSTEES

THE WELBY J. VAN DYKE

FAMILY LIVING TRUST

SCHEDULE OF LIFE INSURANCE AND OTHER ASSETS

<u>Company</u>	<u>Policy Number</u>	<u>Face Amount</u>
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SIGNED this 10 day of FEB, 1980

JS  
WELBY J. VAN DYKE  
SETTLOR

\_\_\_\_\_  
RENE VAN DYKE

\_\_\_\_\_  
ALBERT VAN DYKE

\_\_\_\_\_  
JUDY LeFEVRE  
CO-TRUSTEES

DISTRICT COURT, WAYNE COUNTY, UTAH

Loa, UT 84747

Telephone: 435-836-2731 Fax: 435-836-2479

IN THE MATTER OF THE ESTATE OF  
WELBY J. VAN DYKE,

Deceased,

**ORDER GRANTING PETITION FOR  
THE FORMAL APPOINTMENT OF  
WILL AND FORMAL APPOINTMENT  
OF A PERSONAL REPRESENTATIVE  
AND ORDER DENYING THE MOTION  
OF JOE VAN DYKE TO AVOID  
TRANSFER**

Case No. 963600002

Assigned Judge: Louis G. Tervort

All of the children of Welby J. Van Dyke with the exception of Joe Van Dyke having joined with the petition filed with the Court on the 30th day of June, 1997 for the Formal Probate of Will and Formal Appointment of Personal Representative, and those same children having objected to the appointment of Joe Van Dyke as a personal representative, it is the Order of the Court that Leon Van Dyke, Carl Van Dyke and Richard Van Dyke be formally appointed Personal Representatives of the Estate of Welby J. Van Dyke to act and to serve without bond as provided by will.

It is the further Order of the Court that the Motion of Joe Van Dyke to Avoid Transfer of Property and Equipment is denied and that the Petition of Joe Van Dyke for the Formal Probate of the Will and Personal Representative is likewise denied.

WAYNE COUNTY  
NO 96360002 FILED

DEC 10 1997

*Lauri Nelson* DEPUTY  
CLERK

Charles A. Schultz, USB #4760  
Attorney for Joe Van Dyke  
P.O. Box 526382  
Salt Lake City, Utah 84152-6382  
Telephone (801) 530-5636

**IN THE SIXTH JUDICIAL DISTRICT COURT OF WAYNE COUNTY  
STATE OF UTAH**

---0000000---

IN THE MATTER OF THE ESTATE OF : *NOTICE OF APPEAL*  
WELBY J. VAN DYKE,

:

Deceased.

: Probate No. 963600002

---0000000---

COMES NOW, Joe Van Dyke and appeals to the Utah Supreme Court from the November 13, 1997 Order of the probate court denying his Motion to Avoid Transfer of property of the Estate, Appointing Personal Representatives, and denying his Petition to Appoint an Independent Personal Representative.

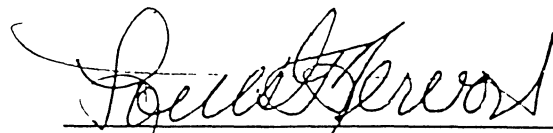
Dated this 10<sup>th</sup> day of December 1995.

  
Charles A. Schultz

ORDER GRANTING PETITION FOR THE FORMAL APPOINTMENT OF WILL AND  
FORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE AND ORDER  
DENYING THE MOTION OF JOE VAN DYKE TO , Case number 963600002, Page -2-

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Dated this 5<sup>th</sup> day of November, 1997.



LOUIS G. TERVORT  
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

On November 5, 1997 a copy of the above ORDER GRANTING PETITION FOR  
THE FORMAL APPOINTMENT OF WILL AND FORMAL APPOINTMENT OF A  
PERSONAL REPRESENTATIVE AND ORDER DENYING THE MOTION OF JOE VAN  
DYKE TO was sent to each of the following by the method indicated:

<u>Addressee</u>	<u>Method (M=mail, P=in person, F=Fax)</u>	<u>Addressee</u>	<u>Method (M=mail, P=in person, F=Fax)</u>
Mr. Michael Gottfredson Attorney at Law 68 South Main - 5th floor Salt Lake City, UT 84101	<i>M</i>	Mr. Charles A. Schultz Attorney at Law P.O. Box 526382 Salt Lake City, UT 84152-6382	<i>M</i>

